

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 4:06CR124-P-B

**CHARLES BARRETT MERRILL,
WILBUR TYRONE PEER,
ERWIN DAVID RABHAN,
JIMMY WINEMILLER, AND
WILLIAM MITCHELL WINEMILLER,**

DEFENDANTS.

ORDER OF CONTINUANCE

These matters come before the court upon Defendant Charles Barrett Merrill's motion to continue trial [167]. After due consideration of the motion, the court finds as follows, to-wit:

Trial is currently set for October 6, 2008. Defendant Merrill seeks a continuance citing a conflicting previously-set federal criminal trial in Georgia. The Government does not object to the motion to continue.

Co-defendant William Michael Winemiller filed a response to the instant motion wherein he cites a previously-set trial in the Circuit Court of Lafayette County on November 12, 2008 and a January 20, 2008 case before U.S. District Judge Sharion Aycock of the U.S. District Court for the Northern District of Mississippi.

On August 20, 2007 the Government filed an interlocutory appeal to the Fifth Circuit Court of Appeals regarding this court's June 28, 2007 order granting in part and denying in part Defendant Rabhan's motion to dismiss. The briefing deadline for the appeal was on or about February 1, 2008.

Since resolution of the interlocutory appeal will affect other pending motions to dismiss filed by the defendants, the court concludes that a continuance is necessary in order to accommodate the appeal. Pursuant to 18 U.S.C. § 3161(h)(1)(E), the court finds that this matter should be continued to accommodate the “delay resulting from any interlocutory appeal.”

The court finds that trial should be continued to accommodate not only the interlocutory appeal, but also counsel for Defendant Merrill’s previously set trial. These circumstances enable the court to exclude, pursuant to 18 U.S.C. § 3161(h)(8)(A), the period of delay from March 24, 2008 until the new trial date to be set in this matter. The time is excludable under subsection (h)(8)(A) because, given the circumstances described above, a continuance is necessary to afford Defendant Merrill’s counsel more time to adequately prepare for his client’s defense. As such, the ends of justice served by the granting of this continuance outweigh the best interests of the public and the defendant in a speedy trial.

IT IS THEREFORE ORDERED AND ADJUDGED that:

- (1) Defendant Charles Barrett Merrill’s motion to continue trial [167] is **GRANTED**;
- (2) Pursuant to 18 U.S.C. §§ 3161(h)(1)(E), 3161(h)(7), and 3161(h)(8)(A), trial of this matter is **CONTINUED** from October 6, 2008 to March 9, 2009 at 9:00 a.m. in the United States Courthouse in Greenville, Mississippi;
- (4) The period from October 6, 2008 to March 9, 2009 is excluded from the Speedy Trial Act considerations as set out above;
- (5) The deadline for filing pretrial motions is February 17, 2009;
- (6) The deadline for submitting a plea agreement is February 23, 2009; and
- (7) **March 9, 2009 is a firm trial date. As this is the eighth continuance in this case, no**

further continuances will be granted.

SO ORDERED, this the 22nd day of July, AD, 2008.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE